



Petitioner seeking an order requiring the Respondent to: (1) pay a civil monetary penalty not to exceed Two-Hundred Ninety Thousand and No/100 Dollars (\$290,000) for the twenty-nine (29) violations of Tenn. Code Ann. § 45-13-126(a); (2) cease and desist violating Tenn. Code Ann. § 47-15-102(b) by recasting the interest rates on two loans where the rate charged exceeded the maximum allowed by statute, as provided by Tenn. Code Ann. § 45-13-116(1); (3) refund any and all interest charged and collected on two loans in violation of Tenn. Code Ann. § 47-15-102(b), pursuant to Tenn. Code Ann. § 45-13-116(2); (4) pay a second civil monetary penalty not to exceed Twenty-Thousand and No/100 Dollars (\$20,000.00) for charging interest rates on two loans in excess of those allowed by Tenn. Code Ann. § 47-15-102(b), pursuant to Tenn. Code Ann. § 45-13-116(3) ; and (5) pay the sum of Fourteen-Thousand Three-Hundred and No/100 Dollars (\$14,300.00) for an examination fee, as required by Tenn. Code Ann. § 45-13-112(b).

After consideration of the pleadings, the argument of counsel, and the entire record as a whole, it is **DETERMINED** that the maximum relief requested by the Petitioner in the Notice of Charges **SHOULD** be granted. Said decision is based on the Preliminary Rulings and Order of Default, Findings of Fact, and Conclusions of Law stated below.

### **I. PRELIMINARY RULINGS AND ORDER OF DEFAULT**

At hearing of this matter on June 25, 2009, the Petitioner's motion for default was granted pursuant to Tenn. Code Ann. § 4-5-309(a) after the Respondent failed to appear at the hearing, after having proper notice thereof. The record indicates that the Respondent was served with a Notice of Opportunity for a Hearing and of the Rights of the Respondent, a Notice of Charges, and Requests for Admission on May 23, 2008, that the Respondent did not request a hearing, or respond in any way. Having held the Respondent in **DEFAULT**, the matter was tried

as uncontested pursuant to Rule 1360-4-1-.15 of the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.

1. On June 15, 2009, the Petitioner filed a Motion to Have the Requests for Admission Deemed Admitted as a Matter of Law pursuant to Tenn. R. Civ. P. 36.01. Having found that the Respondent was served with the Requests for Admission with the Notice of Charges on May 13, 2009, and that the Respondent failed to serve upon the Petitioner a written response or objection to the Requests, the Petitioner's Motion was granted at the hearing.

2. The Findings of Fact below are based on the admitted Requests for Admission in this case.

## **II. FINDINGS OF FACT**

3. The Respondent was a Florida for-profit corporation whose principal office was located at First Central Tower, 360 Central Avenue – Suite 600, Saint Petersburg, Florida 33701.

4. The Respondent, at all times relevant hereto, was registered with the Department, having been issued Certificate of Registration number 1577.

5. The Respondent was served with a "Notice of Charges and Opportunity for Hearing" in the above-captioned case at the same time as the Requests for Admissions.

6. The Respondent was examined by the Department between November 26, 2007 and December 5, 2007.

7. On or about December 5, 2007, the Department completed a "Report of Examination," which was reviewed by and signed by a representative of Respondent.

8. The Respondent had Diana Lane, who was never registered as a mortgage loan originator ("MLO") of the Respondent, perform loan origination activities on loan number 108523063, which was submitted on 5/19/05.

9. The Respondent had Christopher (Chad) Van Dyke, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 2010060212490, which was submitted on 1/31/06, and on loan number 1078417, which was submitted on 3/15/06.

10. The Respondent had Jeremy M. Ross, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 1056562, which was submitted on 9/25/06.

11. The Respondent had LaTonya Turner, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 0095269239, which was submitted on 2/3/06.

12. The Respondent Bryan J. Owens, who has never been registered as a MLO of the Respondent, performed loan origination activities on loan number 651011155 which was submitted on 6/24/05.

13. The Respondent had Charles Washington, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 1001487894, which was submitted on 3/22/05.

14. The Respondent had Gina (Kneib) Fitzmaurice, who has never been registered as a MLO of the Respondent, performed loan origination activities on loan number 1742449575 which was submitted on 8/8/06.

15. The Respondent had Roosevelt Barnes, who was never registered as a MLO of the Respondent, performed loan origination activities on loan number 0145594230 which was submitted on 9/14/06.

16. The Respondent had Mark Duncan, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 31232609, which was submitted

on 5/25/05.

17. The Respondent had David Layne, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 155080646, which was submitted on 11/20/06.

18. The Respondent had Aquandra Spencer, who was never registered as a MLO of the Respondent, perform loan origination activities on loan numbers 9101176038 and 9102176038, both of which were submitted on 6/30/05.

19. The Respondent had Thomas Meacham, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 4000326281, which was submitted on 4/11/05.

20. The Respondent had Laura Lee Needham, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 40586302, which was submitted on 5/26/06.

21. The Respondent had Michael F. Badeau, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 12060390, which was submitted on 12/22/06.

22. The Respondent had J. D. Thomas, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 1000229213, which was submitted on 5/15/05.

23. The Respondent had Richard Zelnar, who was never registered as a MLO of the Respondent, perform loan origination activities on loan numbers 1003672760 and 1003873215, both of which were submitted on 9/9/05.

24. The Respondent had Michael Tate, who was never registered as a MLO of the

Respondent, perform loan origination activities on loan number 2069569A, which was submitted on 4/18/05.

25. The Respondent had Denise Brockmeier, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 11914800, which was submitted on 7/19/05.

26. The Respondent had Rodney Richards, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 50029843, which was submitted on 10/25/05.

27. The Respondent had Denise Harvey, who was never registered as a MLO of the Respondent, perform loan origination activities on file number 050622004S, which was submitted on 6/12/05.

28. The Respondent had Paul Green, who was never registered as a MLO of the Respondent, perform loan origination activities on loan number 1002724840, which was submitted on 4/13/05.

29. The Respondent had Josh Summers, who was registered as a MLO of the Respondent on 2/13/06, perform loan origination activities prior to the registration date on loan number 042-694269-4, which was submitted on 12/22/05.

30. The Respondent had Valencia Ray, who was registered as a MLO of the Respondent on 5/4/06, perform loan origination activities prior to the registration date on loan number 000312642, which was submitted on 1/25/06.

31. The Respondent had John Rumball, who was registered as a MLO of the Respondent on 10/27/05, perform loan origination activities prior to the registration date on loan numbers 11901464 and 11901470, both of which were submitted on 8/16/05.

32. The Respondent had Daniel Hall, who was registered as a MLO of the Respondent on 12/2/05, perform loan origination activities prior to the registration date on loan number 10211339, which was submitted on 5/13/05.

33. The Respondent had John A. Miceli, who was registered as a MLO of the Respondent on 10/5/05, perform loan origination activities prior to the registration date on loan number 651010104, which was submitted on 5/6/05.

34. The Respondent closed loan number 1003888984 on October 7, 2005.

35. The Respondent prepared a Note for loan number 1003888984 with an interest rate of Eight and Forty-Two/One-Hundredths percent (8.42%) for a term of three-hundred sixty (360) months.

36. The maximum effective interest rate, determined pursuant to Tenn. Code Ann § 47-15-103 and published by the Department for October, 2005, was Eight and Thirty-Four/One-Hundredths percent (8.34%).

37. The Respondent closed loan number 11901470 on August 19, 2005.

38. The Respondent prepared a Note for loan number 11901470 with an interest rate of Ten and Seventy-Seven and One-Half/One-Hundredths percent (10.775%) for a term of three-hundred sixty (360) months.

39. The maximum effective interest rate, determined pursuant to Tenn. Code Ann § 47-15-103 and published by the Department for August, 2005, was Eight and Twenty-Three/One-Hundredths percent (8.23%).

40. The Respondent received an invoice for examination services totaling Fourteen-Thousand Three Hundred and No/100 Dollars (\$14,300.00) for Respondent to submit to Division within thirty (30) days of the completion of the Examination.

- 41. The Respondent left the invoice unpaid.
- 42. The Respondent had its license revoked in Georgia on March 2, 2007.
- 43. The Respondent has its license revoked in Illinois on April 8, 2008.

### **III. CONCLUSIONS OF LAW**

44. Tenn. Code Ann. § 45-13-103(a) states that “no person shall act as a mortgage lender, mortgage loan broker, mortgage loan servicer, or mortgage loan originator in this state without first complying with the applicable licensing or registration requirements under this chapter...”

45. Tenn. Code Ann. § 45-13-126(a) requires that “before an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with the licensee or registrant. A mortgage loan originator shall not be registered in affiliation with more than one (1) licensee or registrant at the same time.”

46. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent, while a Registrant under the Act, committed twenty-nine (29) violations of Tenn. Code Ann. § 45-13-126(a) by having the individuals listed in numbered paragraphs eight (8) through thirty-three (33) above perform mortgage loan origination services while not registered with the Department as a mortgage loan originator of the Respondent.

47. Tenn. Code Ann. § 47-15-102(b) states, in pertinent part, that “the maximum effective rate of interest per annum for home loans shall be set at an amount equal to four (4) percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the department of the treasury.”

48. The Findings of Fact Set forth above show by a preponderance of the evidence that the Respondent, while a Registrant under the Act, has violated and is violating Tenn. Code Ann. § 457-15-102(b) by charging interest rates on two (2) loans that exceeded the maximum effective rate of interest for home loans in effect at the time the loans were made.

49. Tenn. Code Ann. § 45-13-112(b) requires that "the licensee or registrant shall pay to the commissioner the reasonable and actual expenses of the investigation and examination. The fees shall be payable in addition to all other fees, taxes, and costs now required by law."

50. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent has violated and is violating Tenn. Code Ann. § 45-13-112(b) by refusing to pay its examination fee of Fourteen-Thousand Three-Hundred and No/100 Dollars (\$14,300.00) to the Commissioner.

51. Tenn. Code Ann. § 45-13-116 provides that if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated this chapter, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter;

(2) Require the refund of any interest, fees, or charges collected by the person in violation of this chapter or any administrative rule issued pursuant to this chapter;  
or

(3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000.00) for each violation of this chapter or administrative rule issued pursuant to this chapter.

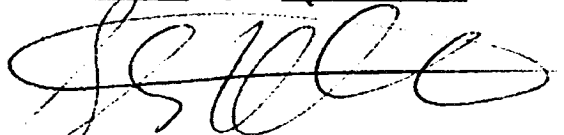
52. Because the Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent has committed the violations of the Act stated herein, Tenn. Code Ann. § 45-13-116 provides grounds to order the Respondent to pay a civil monetary penalty of Three-Hundred Ten-Thousand and No/100 Dollars (\$310,000.00), to cease and desist charging

interest rates that exceed the maximum effective rate of interest in effect when certain loans referenced above were made, to order the Respondent to make refunds to borrowers for interest that exceeded the maximum effective rate of interest in effect when certain loans referenced above were made, and to cease and desist violating Tenn. Code Ann. § 45-13-112(b) by paying its examination fee of Fourteen-Thousand Three-Hundred and No/100 Dollars (\$14,300.00).

#### **IV. ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Respondent, Challenge Financial Investors Corporation, shall pay to the Department of Financial Institutions a civil monetary penalty of Three-Hundred Ten-Thousand and No/100 Dollars (\$310,000.00) for thirty-one (31) violations of Tenn. Code Ann. § 45-13-108(3), shall refund to two borrowers of the loans listed in numbered paragraphs thirty-four (34) and thirty-seven (37) above all interested collected that exceeded the maximum effective rate of interest in effect at the time the loans were made, shall cease and desist collecting interest in excess of the maximum effective rate of interest in effect at the times the loans listed in numbered paragraphs thirty-four (34) and thirty-seven (37) were made by recasting the loans with the maximum effective rate of interest in effect at the time each loan was made, and shall cease and desist violating Tenn. Code Ann. § 45-13-112(b) by paying to the Department of Financial Institutions its examination fee of Fourteen-Thousand Three-Hundred and No/100 Dollars (\$14,300.00).

This Initial Order entered and effective this 18<sup>th</sup> day of AUG., 2009.



Steve R. Darnell  
Administrative Judge

Filed in the Administrative Procedures Division this 18<sup>th</sup> day of Aug., 2009.

A handwritten signature in cursive script, reading "Thomas G. Stovall". The signature is written in dark ink and is positioned above a horizontal line.

Thomas G. Stovall, Director